

IT 00-0088-GIL 10/26/2000 SUBTRACTION MODIFICATIONS - ENTERPRISE ZONES AND
FOREIGN TRADE ZONES

General Information Letter: Dividends paid by a Subchapter S corporation do not qualify for the subtraction for dividends received from an enterprise zone.

October 26, 2000

Dear:

This is in response to your letter dated October 2, 2000 in which you state the following:

I would like to request a legal opinion regarding the above Section. My understanding of the Department's regulation, is that the subtraction is allowed only on a personal return regarding "C" or "S" corporation dividends paid from retained earnings.

I have been asked to review a return for a potential new client that is an "S" corporation. This client pays no dividends from retained earnings which are reported on Form 1099-DIV, but pays a distribution of taxable earnings and reports it on Form K-1, line 20. On the shareholder's personal Form IL-1040, Schedule 1299-C, a subtraction is taken for this distribution.

In conclusion, is this the appropriate handling for this distribution? More precisely, can an "S" corporation shareholder claim on their Form IL-1040, Schedule 1299-C, the enterprise trade zone dividend subtraction for distribution reported on line 20 of Form K-1, rather than a dividend from retained earnings reported on Form 1099-DIV?

I am making the assumption that the 95% test is satisfied.

According to the Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLR") and General Information Letters ("GIL"). The regulations explaining these two types of rulings issued by the Department can be found in 2 Ill.Adm.Code §1200, or on the website <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics. GILs, however, are not binding on the Department.

Your understanding regarding our Enterprise Zone Dividend Subtraction regulation is correct in that "the subtraction is allowed only on a personal return regarding "C" or "S" corporation dividends paid from retained earnings". For your convenience, please find a copy of the relevant regulation, specifically 86 Ill.Adm.Code 100.2480. Section 100.2480(d) makes clear that taxpayers may subtract distributions from a corporation *only to the extent such distributions are characterized as dividends*.

Please note the example in Section 100.2480(d)(2) wherein an "S" corporation shareholder received a distribution from an S corporation. The example does not allow a subtraction since such a distribution is not considered a *dividend*.

As stated above, this is a general information letter which does not constitute a statement of policy that either applies, interprets or prescribes tax law. It is not binding on the Department. Should you have additional questions, please do not hesitate to contact our office.

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Sincerely,

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